

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

CIVIL NO. 5:98CV92

**JAMES R. BARNES, and wife)
DOROTHY G. BARNES; GRADY H.)
BEARD, and wife SUZY M. BEARD;)
WAYNE BEHELER; JAMES L. COBB,)
and wife REBEKAH COBB;)
BARNEY MERRILL GRANT, and wife)
HAZEL GRANT; E. F. GREENE, JR.;)
BENJAMIN G. GROGAN, and wife)
HELEN D. GROGAN; JOEANN S.)
HANCOCK, Individually and as)
Representative of the Estate of)
Marion Hancock, Deceased; JERRY)
LEE HEWELL, and wife JANICE)
HEWELL; BETTY S. HONGISTO,)
Executrix of the Estate of Iver Oscar)
Hongisto, Deceased; VIRGINIA F.)
HORNE, Individually and as)
Executrix of the Estate of Jimmy R.)
Horne, Sr., Deceased; WILLIAM D.)
JOYCE, and wife PATSY F. JOYCE;)
ROBERT L. MAUNEY, and wife)
TERESA MAUNEY; ROGER D.)
PHILLIPS; GERALD W. RICHARDS,)
and wife SUSAN H. RICHARDS;)
LARRY K. BROOME, and wife,)
TREVA E. BROOME; ROGER D.)
CHURCH, and wife LORETTA H.)
CHURCH; SHARON C. COBB,)
Executrix of the Estate of Orvil L.)
Cupp, Deceased; ALTON L. HUGHES,)
and wife LENA M. HUGHES;)
CHARLES M. McGINNIS, and wife)**

AVA P. McGINNIS; and CURTIS H.)
 CUTHBERTSON, Administrator of the)
 Estate of Hoy v. Cuthbertson,)
 Deceased,)

Plaintiffs,)

Vs.)

ORDER

ASBESTOS CLAIMS)
 MANAGEMENT CORPORATION;)
 A. W. CHESTERTON, INC.; CLEAVER)
 BROOKS; CROWN CORK & SEAL)
 COMPANY, INC.; THE FLINTKOTE)
 COMPANY; FOSTER WHEELER)
 CORPORATION; GARLOCK, INC.;)
 GENERAL ELECTRIC COMPANY;)
 GEORGIA-PACIFIC CORPORATION;)
 METROPOLITAN LIFE INSURANCE)
 COMPANY; MINNESOTA MINING)
 AND MANUFACTURING COMPANY,)
 INC.; NORTH BROTHERS, INC.;)
 OWENS-ILLINOIS, INC.; RAPID)
 AMERICAN CORPORATION; RILEY)
 STOKER CORPORATION;)
 CBS CORP.; and CERTAINTIED)
 CORP.,)

Defendants.)

THIS MATTER is before the Court *sua sponte* to clarify certain rulings issued during a pretrial conference conducted on December 12, 2006.

Plaintiffs' counsel have identified five groupings of Plaintiffs for trial in April 2007.¹ Counsel request that trial commence as to Group 1 to be followed sequentially by Groups 2 through 5 until all of the 33 individual Plaintiffs' cases have been tried. The individual Plaintiffs and the Group to which each has been assigned are as follows:

Group 1 involving exposure at a Duke Power facility:

E. F. Greene, Jr.
Marion Hancock, deceased

Group 2 involving exposure at a textiles facility:

William Joyce, and his wife, Patsy.

Group 3 involving exposure at a textiles facility:

Wayne Beheler
Jerry Hewell, and his wife, Janice
Roger Phillips

Group 4 involving exposure at a Duke Power facility:

James Cobb, and his wife, Rebekah
Gerald Richards, and his wife, Susan
Roger Church, and his wife, Loretta

Group 5 involving exposure at a textiles facility:

Larry Broome, and his wife, Treva

¹The Court recognizes that the groupings contain named Plaintiffs from other cases, such as 3:98cv394 and 1:00cv33. The purpose of this Order is to address only the Plaintiffs named in this action, 5:98cv92.

These groupings by the Plaintiffs' counsel have left ungrouped the following individual Plaintiffs²:

James Barnes, and his wife, Dorothy
Grady Beard, and his wife, Suzy
Barney Grant, and his wife, Hazel
Benjamin Grogan, and his wife, Helen
Jimmy Horne, deceased
Robert Mauney, and his wife, Teresa
Orvil Cupp, deceased
Charles McGinnis, and his wife, Ava
Hoy Cuthbertson, deceased

The Court finds the following Defendants remain in the action:

Asbestos Claims Management Corporation
A. W. Chesterton, Inc.
Cleaver Brooks
Crown Cork & Seal
Flintkote
Foster Wheeler Corporation
Garlock, Inc.
General Electric
Georgia Pacific Corporation
Metropolitan Life Insurance Company
3M Company
North Brothers, Inc.
Owens-Illinois, Inc.
Rapid American Corporation
Riley Stoker Corporation
CBS Corporation, f/k/a Westinghouse

² Plaintiffs Betty Hongisto, Executrix of the Estate of Iver Hongisto, and Alton and Lena Hughes were scheduled for trial in October 2006 and their cases were reported as settled. However, dismissals remain outstanding.

CertainTeed Corporation

During the pretrial conference, counsel informed the Court that out of the above Defendants, the only ones remaining in the action are A. W. Chesterton, Inc., Cleaver Brooks, Crown Cork & Seal, and North Brothers, Inc.

The Court has the following questions which the parties are to address by written pleading to be filed with the Court. Plaintiffs' counsel shall respond within 10 business days and defense counsel shall respond within 10 business days after the Plaintiffs' response.

1. Is it possible to add the remaining 9 Plaintiffs to any one or more of the Groups 1 through 5?
2. What Defendants remain in the action for trial?
3. If the remaining 9 Plaintiffs cannot be added to the groups presently set, what grouping of these remaining Plaintiffs is proposed and what trial date is requested?

IT IS, THEREFORE, ORDERED that on or before **DECEMBER 26, 2006**, the Plaintiffs shall respond to the interrogatories above.

IT IS FURTHER ORDERED that on or before **JANUARY 5, 2007**, the Defendants shall file response to the interrogatories above.

IT IS FURTHER ORDERED that the first group of Plaintiffs, in final form which will be set by the Court after the parties' responses are reviewed, are hereby **CALENDARED** for trial to begin on April 9, 2007, and continuing group by group for a three week term of Court.

IT IS FURTHER ORDERED that dismissals and/or consent judgments be filed as to the Plaintiffs whose cases were settled from the October 2006 trial calendar within 30 days from entry of this Order.

Signed: December 15, 2006

A handwritten signature in dark ink, appearing to read 'Lacy H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

